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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,447	12/10/2001	Marc W. Kirschner	0725.1039-009	6973
21005	7590	10/23/2003	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			ULM, JOHN D	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/016,447	KIRSCHNER ET AL.	
	Examiner	Art Unit	
	John D. Ulm	1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-49 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1 to 49 are pending in the instant application.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 to 6, 8 to 12, 14 to 18, drawn to a ligand-specific binding assay employing a recombinant cell, classified in class 435, subclass 7.2.
- II. Claims 7, 13, 19, 48 and 49, drawn to an FGF receptor ligand of unspecified constitution, classified in class 530, subclass 350.
- III. Claims 20 and 38 to 40, in so far as they are drawn to an oligonucleotide probe hybridizing to a polynucleotide of SEQ ID NO:1, and method of use, classified in class 435, subclass 6.
- IV. Claims 20 and 38 to 40, in so far as they are drawn to an oligonucleotide probe hybridizing to a polynucleotide of SEQ ID NO:3, and method of use, classified in class 435, subclass 6.
- V. Claims 21 and 22, in so far as they are drawn to a pharmaceutical composition comprising a polypeptide of SEQ ID NO:2, classified in class 514, subclass 2.
- VI. Claims 21 and 22, in so far as they are drawn to a pharmaceutical composition comprising a polypeptide of SEQ ID NO:4, classified in class 514, subclass 2.
- VII. Claims 23 to 26, 33 and 34, in so far as they are drawn to a method of treatment by administering a polypeptide of SEQ ID NO:2, classified in class 514, subclass 2.
- VIII. Claims 23 to 26, 33 and 34, in so far as they are drawn to a method of treatment by administering a polypeptide of SEQ ID NO:4, classified in class 514, subclass 2.

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- IX. Claims 27 to 32, in so far as they are drawn to a method of treatment by administering a compound of unspecified constitution that is an antagonist to a polypeptide of SEQ ID NO:2, classified in class 514, subclass undeterminable.
- X. Claims 27 to 32, in so far as they are drawn to a method of treatment by administering a compound of unspecified constitution that is an antagonist to a polypeptide of SEQ ID NO:4, classified in class 514, subclass undeterminable.
- XI. Claims 35 to 37, 41 and 42, in so far as they are drawn to an antibody that binds to a polypeptide of SEQ ID NO:2, and a method of use, classified in class 530, subclass 388.22.
- XII. Claims 35 to 37, 41 and 42, in so far as they are drawn to an antibody that binds to a polypeptide of SEQ ID NO:4, and a method of use, classified in class 530, subclass 388.22.
- XIII. Claims 43 to 47, drawn to a “chimeric fusion protein”, classified in class 530, subclass 350.

The inventions are distinct, each from the other because of the following reasons:

The ligand of unspecified constitution that is invention II, the two different oligonucleotide probes of inventions III and IV, the polypeptide of SEQ ID NO:2 that is invention V, the polypeptide of SEQ ID NO:4 that is invention VI, the antagonist to a polypeptide of SEQ ID NO:2 that is employed in the method of invention IX, the antagonist to a polypeptide of SEQ ID NO:4 that is employed in the method of invention X, the antibody that binds to a polypeptide of SEQ ID NO:2

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that is invention XI, antibody that binds to a polypeptide of SEQ ID NO:4 that is invention XII, and the chimeric receptor protein of invention XIII are ten different chemical compounds each of which can be made and used without the others. These ten different compounds lack unity of invention because they do not share a common utility that is based upon a common special technical feature or combination of features lacking from the prior art.

Inventions I and XIII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process as claimed does not require the chimeric receptor of invention XIII because it can be practiced with a native receptor protein.

Each of inventions V and VI are related to each of inventions VII and VIII as product and process of use, respectively. They are shown to be distinct because each of the products as claimed can be employed to produce antibodies thereto, which is a process that is materially different from the claimed process of treatment.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

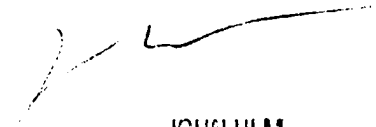
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Ulm whose telephone number is (703) 308-4008. The examiner can normally be reached on Monday through Friday from 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached at (703) 308-6564.

Official papers filed by fax should be directed to (703) 308-4242 or (703) 872-9306. Official responses under 37 C.F.R. § 1.116 should be directed to (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



JOHN D. ULM
PRINCIPAL EXAMINER
GROUP 1800